

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HSBC BANK USA, NATIONAL
ASSOCIATION,

Plaintiff,

v.

MARIA VICTORIA B. MANUEL, JON JON F.
MANUEL,

Defendants.

No. C 10-01186 SI

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION TO REMAND;
REMANDING ACTION TO SAN MATEO
COUNTY SUPERIOR COURT; AND
DENYING PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Plaintiff has filed a motion to remand this action to the San Mateo County Superior Court for lack of federal jurisdiction and has requested an award of the attorneys' fees and costs associated with the removal. The motion has not been opposed by defendants. For the reasons set forth below, the Court hereby GRANTS the motion to remand and DENIES the request for fees and costs.

BACKGROUND

On November 6, 2009, plaintiff HSBC Bank filed an unlawful detainer action in the San Mateo County Superior Court against defendants Maria Victoria and Jon Jon Manuel. The action concerned defendants' home located at 133 Cymbidium Circle in South San Francisco, California. After the litigation had progressed in state court for approximately four months, defendants removed the action to this Court on March 22, 2010, citing federal question jurisdiction.

Plaintiff filed this motion to remand for lack of federal jurisdiction on April 29, 2010. Before a hearing could be held on the motion, however, a Notice of Voluntary Dismissal was filed, purportedly on behalf of plaintiff, and the action was closed. After it was discovered that the attorney who filed the

dismissal notice did not represent either party in this action,¹ the case was reopened and the Court ordered defendants to file an opposition to the motion to remand by August 13, 2010. That date has now passed and defendants have not filed an opposition.

DISCUSSION

I. Motion to Remand

An action filed in state court may be removed to federal court only if the federal court would have had original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). The bases for federal subject-matter jurisdiction are federal question jurisdiction under 28 U.S.C. § 1331 and diversity of citizenship jurisdiction under 28 U.S.C. § 1332. The removal statute is strictly construed against removal, and doubt is resolved in favor of remand. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979). Remand to state court may be ordered either for lack of jurisdiction or for any defect in removal procedure. *See* 28 U.S.C. § 1447(c).

Removal was clearly improper in this case. First, defendants cite federal question jurisdiction as the basis for removal. The sole cause of action stated in the complaint, however, is for unlawful detainer. This is not a federal cause of action. Defendants reference several federal statutes in their removal notice, including the Fair Debt Collection Practices Act, Real Estate Settlement Procedures Act, and Truth in Lending Act. These statutes, however, do not form the basis of plaintiff's complaint, and have no place in determining whether this Court has jurisdiction over this matter. *Franchise Tax Bd. of the State of Cal. v. Constr. Lab. Vacation Trust for S. Cal.*, 463 U.S. 1, 10 (1983) ("[A] defendant may not remove a case to federal court unless the *plaintiff's* complaint establishes that the case 'arises under' federal law.") (original emphasis). Second, although defendants did not assert diversity jurisdiction as a ground for removal, the Court notes that removal would not be proper on that basis either, as defendants are citizens of California. 28 U.S.C. § 1441(b) (actions not arising under federal law are "removable only if none of the . . . defendants is a citizen of the State in which such action is brought"). Finally, a Notice of Removal must be filed within thirty days of service of the summons and

¹ That attorney, Timothy McCandless, apparently represented defendants at some point during the underlying state court action.

1 complaint. *Id.* § 1446(b). Defendants did not file their Notice of Removal until more than four months
2 after they received service, *see* Pltf. RJN Ex. 2, and have provided no explanation for the untimely
3 removal.

4 Accordingly, the unopposed motion to remand is GRANTED.

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6 **II. Attorneys' Fees and Costs**

7 Plaintiff also seeks an award of the attorneys' fees and costs incurred in bringing the motion to
8 remand. 28 U.S.C. § 1447(c) permits the Court to order payment of "just costs and any actual expenses,
9 including attorney fees, incurred as a result of [an improper] removal." In deciding whether to order
10 payment of costs, the Court must assess whether removal was "wrong as a matter of law." *Balcorta v.*
11 *Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1106 n.6 (9th Cir. 2000). "[A]bsent unusual
12 circumstances, [costs] should not be awarded when the removing party has an objectively reasonable
13 basis for removal." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 136 (2005).

14 It is plain that there was no valid basis for removal, as this action involves one state law cause
15 of action, and there is no diversity of citizenship. Nonetheless, defendants are proceeding pro se, and
16 apparently believed that asserting federal statutes in defense of this action supported its removal. In
17 view of defendants' pro se status, the Court declines to order an award of fees and costs. *See Boutrup*
18 *v. Washburn*, No. 09-2678, 2009 WL 4573299, at *2 (E.D. Cal. Nov. 24, 2009) ("[W]hile having the
19 status of pro se does not set up a dichotomy of rules vis-a-vis represented litigants, that pro se status
20 warrants some consideration when reviewing a § 1447(c) request."); *HSBC Bank USA, N.A. v. Bryant*,
21 No. 09-1659, 2009 WL 3787195, at *5 (S.D. Cal. Nov. 10, 2009) (a pro se defendant is "entitled to more
22 leeway in his attempt to comply with the removal statute, as long as it was not objectively
23 unreasonable"). Plaintiffs' request for attorneys' fees and costs is DENIED.

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CONCLUSION

For the foregoing reasons, and for good cause shown, the unopposed motion to remand is GRANTED. (Docket No. 7). This action is hereby ordered REMANDED to the San Mateo County Superior Court.

IT IS SO ORDERED.

Dated: August 25, 2010



SUSAN ILLSTON
United States District Judge